IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 1107 OF 2005

Shri Salim Kasim Shaikh ... Appellant

V/s

The Municipal Corpn. of City of Solapur. ... Respondent

Mr. Surel S. Shah for the appellant.

Mr. J.P. Kharge holding for Shri Shail Sakhare for the Respondent No.3.

CORAM: P.V. KAKADE, J.

DATED: 3RD OCT., 2005

P.C.:

1. The appellant has filed this appeal against the judgment and order passed by the Addl. District Judge, Solapur, dated 4.1.2005 dismissing the suit and confirming the judgment and order passed by the Civil Judge, S.D., Solapur dismissing the plaintiff's suit.

2. The plaintiff had filed the suit for injunction and mandatory injunction against the defendant municipal council. The plaintiff came with the case that he was tenant in the suit premises and defendant Nos. 1 and 2 had unauthorisedly demolished the suit property when the

present suit was pending before the High Court. Therefore, mandatory injunction also came to be prayed for. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had not proved that he was tenant and defendants had unauthorisely demolished the construction. The suit was also held to be bad in law for want of notice under Sec. 487 of the B.P.M.C. Act. The plaintiff therefore was non-suited dismissing the suit.

The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both parties, came to the conclusion that the findings recorded by the lower Court were legal and proper and, therefore, dismissed the appeal. Hence the present appeal.

3. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal. The evidence on record is seen to have been appreciated by both the Courts below in proper perspective holding that the plaintiff failed to prove that the demolition made by the respondents was unauthorised. The lower appellate Court also come to the conclusion that the record showed that illegal

construction was removed from the disputed land as per the order of the High Court and appellants were removed from the immovable property as per due course of law after giving notice to them and in view of the directions of the High Court. Under the circumstances, the appellants had no case and, therefore, both proceedings came to be disposed of.

4. Hence, I do not see any reason to interfere with the findings recorded by both the Courts below and hence the appeal stands dismissed with no order as to costs.

.....